



1 of the Counterclaim consist of legal conclusions that do not require a response. To the extent  
2 that a response is required, Peri denies them.

3 **JURISDICTION**

4 2. In response to paragraph 2 of the Counterclaim, Peri states that the allegations  
5 therein consist of legal conclusions that do not require a response. To the extent that a response  
6 is required, Peri denies them.

7 **PARTIES**

8 3. In response to paragraph 3 of the Counterclaim, Peri admits the allegations  
9 therein.

10 4. In response to paragraph 4 of the Counterclaim, Peri admits that they are claimants  
11 to waters of the Walker River and its tributaries and also to groundwater in the Walker River  
12 Basin. Peri lacks knowledge or information sufficient form a belief as to the truth or falsity of  
13 the remaining allegations in paragraph 4 and accordingly denies the same.

14 **GENERAL ALLEGATIONS**

15 5. In response to paragraph 5 of the Counterclaim, Peri denies the allegations therein  
16 and refers to the Decree for its terms.

17 6. In response to paragraph 6 of the Counterclaim, Peri states that the allegations  
18 therein consist of legal conclusions that do not require a response. To the extent a response is  
19 required, Peri denies them.

20 7. In response to paragraph 7 of the Counterclaim, Peri admits that the Decree was  
21 amended on April 24, 1940, and refers to the Decree for its terms. Peri denies the allegations in  
22 paragraph 7 to the extent they are contrary to or inconsistent with the terms of the Decree.

23 8. In response to paragraph 8 of the Counterclaim, Peri admits that since April 14,  
24 1936, persons and entities have appropriated water from sources within the Walker River Basin  
25 pursuant to and consistent with the laws of the State of Nevada and the State of California. Peri  
26 further states that the remaining allegations in paragraph 8 consist of legal conclusions and do  
27 not require a response. To the extent a response is required, Peri denies them.  
28

**FIRST CLAIM FOR RELIEF**

**Weber Reservoir**

9. In response to paragraph 9 of the Counterclaim, Peri repeats and realleges the responses to paragraphs 1 through 8 as though they are fully set forth herein.

10. In response to Paragraph 10 of the Counterclaim, Peri lacks sufficient knowledge or information to admit or deny the first three sentences and on that basis denies them. The remaining allegations in paragraph 10 consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

11. In response to paragraph 11 of the Counterclaim, Peri lacks sufficient knowledge or information to admit or deny the allegations therein and on that bases denies them.

12. In response to paragraph 12 of the Counterclaim, Peri states that the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

**SECOND CLAIM FOR RELIEF**

**Lands Restored and Added to Walker River Reservation**

13. In response to paragraph 13 of the Counterclaim, Peri repeats and realleges the responses to paragraphs 1 through 12 as though they are fully set forth herein.

14. In response to paragraph 14 of the Counterclaim, Peri states that the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

15. In response to paragraph 15 of the Counterclaim, Peri states that the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

16. In response to paragraph 16 of the Counterclaim, Peri states that the allegations therein consist of legal conclusions that do not require a response. To the extent a response is required, Peri denies them.

**THIRD CLAIM FOR RELIEF**

**Groundwater for All Lands Within the Walker River Reservation**

17. In response to paragraph 17 of the Counterclaim, Peri repeats and realleges the responses to paragraphs 1 through 16 as though they are fully set forth herein.

1           18.     In response to paragraph 18 of the Counterclaim, Peri states that the allegations  
2     therein consist of legal conclusions that do not require a response. To the extent a response is  
3     required, Peri denies them.

4           19.     In response to paragraph 19 of the Counterclaim, Peri lacks sufficient knowledge  
5     or information to admit or deny the allegations therein and on that basis denies them.

6           20.     In response to paragraph 20 of the Counterclaim, Peri states that the allegations  
7     therein consist of legal conclusions that do not require a response. To the extent a response is  
8     required, Peri denies them.

9                           **AFFIRMATIVE DEFENSES**

10                          **First Affirmative Defense**

11           The Counterclaim fails to state a claim upon which relief may be granted.

12                          **Second Affirmative Defense**

13           The Counterclaim is barred by the doctrines of claim preclusion, issue preclusion and/or  
14     other principles of finality and repose.

15                          **Third Affirmative Defense**

16           The general principles of finality and repose that apply to decreed water rights preclude  
17     Paragraph XIV of the Decree from being construed as authorizing the modification of the Decree  
18     to recognize additional reserved water rights for the Tribe that were not recognized and  
19     established in the Decree.

20                          **Fourth Affirmative Defense**

21           The Counterclaim is barred by the doctrine of laches.

22                          **Fifth Affirmative Defense**

23           The Counterclaim is barred by the doctrine of estoppel.

24                          **Sixth Affirmative Defense**

25           Through commencement and resolution of claims against the United States by the Walker  
26     River Paiute Tribe, the Counterclaim is barred by the doctrine of waiver.

27                          **Seventh Affirmative Defense**

28           A federal reserved water right exists only if “necessary” to fulfill the *primary* purposes  
   – as opposed to the *secondary* purposes – of federal reserved lands and then only to the extent  
   necessary to meet the “minimal need” of the federal reservation. The Counterclaim fails to allege

1 that the water granted to the Tribe in the Walker River Decree is insufficient to meet the primary  
2 purposes for which the lands were added to the Walker River Indian Reservation, and that the  
3 additional water from any source is “necessary” to fulfill the primary purposes of such added  
4 lands. Thus, there is no reserved right to additional water for the lands that have been added to  
5 the reservation.

6 **Eighth Affirmative Defense**

7 Under the implied reservation of water doctrine, the United States may not reserve water  
8 from a water source that is not within the lands which are being reserved. To the extent that the  
9 Counterclaim seeks water from a source for lands which did not include that water source at the  
10 time of reservation, no such claim can be made.

11 **Ninth Affirmative Defense**

12 The primary purpose of adding lands to the Walker River Indian Reservation from 1918  
13 to 1972 was for purposes of dry land grazing, which requires no water for irrigation and only  
14 sufficient water to water livestock which can be reasonably grazed on such lands.

15 **Tenth Affirmative Defense**

16 The implied reservation of water rights doctrine does not apply to the storage of water.

17 **Eleventh Affirmative Defense**

18 The implied reservation of water rights doctrine does not apply to groundwater.

19 **Twelfth Affirmative Defense**

20 If the implied reservation of water rights doctrine applies to groundwater, it does so only  
21 in circumstances where it is established that there is insufficient surface water to otherwise satisfy  
22 the claimed reserved water right. The water right provided for the Walker River Indian  
23 Reservation by the Decree is sufficient to accomplish the purposes for which lands were added  
24 to the Reservation.

25 **Thirteenth Affirmative Defense**

26 The United States had no power, after Nevada became a State on October 31, 1864, to  
27 reserve water for the benefit and use of federal land.

28 **Fourteenth Affirmative Defense**

In withdrawing from the public domain some or all of the lands added to the Walker River  
Indian Reservation, Congress provided that such withdrawal should not affect existing legal

rights, or valid rights, including, but not limited to, the right of the State of Nevada to control and regulate the use of waters within the State.

**Fifteenth Affirmative Defense**

To the extent that this Court determines that any addition of land to the Walker River Indian Reservation resulted in the reservation of water, the use of that water must be restricted to the use impliedly contemplated at the time the land was added to the Reservation.

**Sixteenth Affirmative Defense**

Peri reserves the right to amend this answer as additional affirmative defenses are discovered.

WHEREFORE, the Peri prays for judgment against the United States of America as follows:

1. For the dismissal of the Counterclaim with prejudice with the United States taking nothing thereby;
2. For its costs of suit allowed by law; and
3. For such other and further relief as the Court deems just and proper.

Dated this 1<sup>st</sup> day of August, 2019.

SIMONS HALL JOHNSTON PC

By: /s/ Brad M. Johnston  
Brad M. Johnston  
SIMONS HALL JOHNSTON PC  
22 State Route 208  
Yerington, Nevada 89447  
Telephone: 775-463-9500

*Attorneys for Defendants Desert Pearl Farms, LLC, Peri Family Ranch, LLC, Peri & Peri, LLC, and Frade Ranches, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of August, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Brad M. Johnston  
Brad M. Johnston